

Exhibit 40



Making San Francisco Bay Better

BCDC Original

PERMIT NO. 21-98

(Issued on March 1, 1999, As
Amended Through January 24, 2006)
CORRECTED AMENDMENT NO. TWO

RECEIVED

MAY 20 2008

VII Pac Shores Investors, L.L.C., a Delaware limited liability company
c/o Starwood Capital Group
455 Market Street, Suite 2200
San Francisco, California 9410

SAN FRANCISCO BAY CONSERVATION
& DEVELOPMENT COMMISSION

ATTENTION: Jerry Fang

Ladies and Gentlemen:

On February 18, 1999, the San Francisco Bay Conservation and Development Commission, by a vote of 21 affirmative, 0 negatives, and 0 abstentions, approved the resolution pursuant to which this the original permit is hereby had been issued. Moreover, on February 25, 2000 and January 24, 2006, pursuant to Regulation Section 10822, the Executive Director approved Amendment Nos. One and Two, to which this amended permit is hereby issued:

I. Authorization

A. Subject to the conditions stated below, the permittee, VII Pac Shores Investors, L.L.C., Pacific Shores Center Limited Partnership is granted permission to do the following:

1. In the Bay:

- a. Remove and dispose outside of the Commission's jurisdiction approximately 1,450 cubic yards (6,525 square feet) of concrete riprap and debris;
- b. Install, use, and maintain approximately 2,406 cubic yards (10,827 square feet) of quarystone riprap for shoreline protection and stabilization; and
- c. Construct, use, and maintain for public access an approximately 2,600-square-foot, pile-supported dock, an approximately 650-square-foot, pile-supported dock, and an approximately 1,650-square-foot, launching platform, totaling approximately 4,900 square feet of pile-supported and floating fill.

2. Within the 100-foot shoreline band:

- a. Remove and dispose outside the Commission's jurisdiction approximately 750 cubic yards (3,375 square feet) of concrete riprap and debris;
- b. Install, use, and maintain approximately 863 cubic yards (3,883 square feet) of quarystone riprap for shoreline protection and stabilization;

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- c. Construct, use, and maintain a building intended for a marine sciences center with a maximum height of 40 feet (2 stories), a maximum footprint of 14,000 square feet, and a minimum setback of 40 feet from the top of bank;
- d. Construct, use, and maintain a building intended for an aquatic center with a maximum height of 40 feet (2 stories), maximum footprint of 14,000 square feet, and a minimum setback of 40 feet from the top of the bank;
- e. Construct, use, and maintain a building intended for a conference center/restaurant complex with a maximum height of 40 feet (2 stories), a maximum footprint of 7,500 square feet and a minimum setback of 40 feet from the top of bank;
- f. Construct, use, and maintain a building intended for a retreat facility with a maximum height of 20 feet (1 story), a maximum footprint of 2,000 square feet, and a minimum setback of 30 feet from the top of bank;
- g. Construct, use, and maintain approximately 3,663 square feet of roads, 3,418 square feet of parking, and 20,677 square feet of pathways and sidewalks;
- h. Install, use, and maintain approximately 176,262 square feet of irrigated landscaping;
- i. Construct, use, and maintain an approximately 200,357-square-foot public access area including approximately 20,677 square feet of paved pathways and sidewalks, approximately 176,262 square feet of public access in landscaped areas, and approximately 3,418 square feet of paved areas for public access parking;
- j. Construct, use, and maintain an extension of the public access shoreline trail to the east property line shared with Westpoint Marina (Amendment No. Two).
- ~~j.~~ k. Grade approximately 47,000 cubic yards of material from Deepwater Slough Island to create grades of approximately 3.5 to 4.0 feet NGVD and excavate approximately 8,000 cubic yards of material to construct sloughs -1.0 to -2.0 feet NGVD in depth and 3 to 10 feet in length to establish appropriate tidal exchange at Deepwater Slough Island;
- ~~k.~~ l. Remove topsoil from Deepwater Slough Island to the Pacific Shores Center project site and place the material both inside and outside the Commission's jurisdiction;
- ~~l.~~ m. Remove the levee at Deepwater Slough Island, along Redwood Creek, with the use of a tracked excavator;

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- ~~m.~~ n. Plant native vegetation at Deepwater Slough Island to create low marsh dominated by cordgrass and mid-marsh dominated by pickleweed; and
- ~~n.~~ o. Maintain the created, restored, and improved wetland habitat by: (1) removing debris or excessive sediments that impair drainage or desired tidal flows; (2) re-excavating of sloughs as required to achieve proper hydrologic functioning; (3) implementing of weed control measures to encourage the success of native plant growth; and (4) implementation of erosion control measures, if necessary.

B. This authority is generally pursuant to and limited by the permittee's application received November 17, 1998, your letter dated February 18, 2000, requesting Amendment No. One, and your letter dated October 26, 2005, requesting Amendment No. Two, including all accompanying material and any revisions to the project thereafter, but subject to the modifications required by the conditions herein.

C. The work authorized by ~~this the original permit must was to~~ commence by March 31, 2000, and ~~must was to~~ be diligently pursued to completion and ~~must was to~~ be completed by December 31, 2007, ~~unless the terms of this authorization are changed by amendment of this permit.~~ Amendment No. One to this permit authorized an extension of project commencement until March 31, 2001. The pedestrian shoreline trail authorized and required under Amendment No. Two shall be completed and open to the public by the time the Phase 1 Public Access required at the Westpoint Marina, BCDC Permit No. 2-02, is completed and open to the public. Also, as required under Amendment No. Two herein, the pedestrian safety measures associated with the vehicular connections constructed between the project site, Pacific Shores Center, and Westpoint Marina (BCDC Permit No. 2-02) shall be completed by the time any vehicles begin using these connections.

D. The project authorized herein will result in a net increase of 956 cubic yards of new, submerged fill covering approximately 4,302 square feet for shoreline protection and 4,900 square feet of new, pile-supported and floating fill for boat docks. The permittee will also remove a total of approximately 2,200 cubic yards of concrete debris, covering approximately 9,900 square feet, and replace it with approximately 3,270 cubic yards of new riprap, covering approximately 14,715 square feet, resulting in a net increase of 1,069 cubic yards, covering approximately 4,811 square feet, of shoreline protection. Of this amount, approximately 956 cubic yards of fill, covering 4,302 square feet, will be placed below the mean high tide line and approximately 113 cubic yards, covering approximately 509 square feet, placed above the mean high tide line. Therefore, the net increase in total fill authorized herein is approximately 9,202 square feet. In addition, the project authorized herein will result in the improvement and dedication of an approximately 549,432-square-foot area (12.6 acres) of public access along the shoreline frontage and project perimeter and a total of 227,700 square feet (5 acres) of guaranteed public access along a 1.27-mile portion of Seaport Boulevard within the project site. The Deepwater Slough Island project authorized herein will result in approximately 140 acres of new Bay as a result of restoring the site to tidal action.

II. Special Conditions

The authorization made herein shall be subject to the following special conditions, in addition to the standard conditions in Part IV:

A. Project Construction. The project authorized herein shall be built in substantial conformance with the plans entitled, "Pacific Shores Center, Schematic Submittal, Sheet L8.6", dated June 16, 1998, received by the Commission on November 17, 1998, and prepared by DES Architects and Engineers, Bohley-Maley Associates, and Befu Associates and the plans entitled "Pacific Shores Center, BCDC Submittal, Sheets A1.1, C1.1-C1.6", dated October 9, 1998, received by the Commission on November 17, 1998, and prepared by DES Architects and Engineers, Bohley-Maley Associates, and Befu Associates.

B. Specific Plans and Plan Review

1. **Plan Review.** No work whatsoever shall be commenced pursuant to this authorization until final precise site, engineering, grading, architectural, and landscaping and planting plans, as well as any other relevant criteria, specifications, and plan information for that portion of the work have been submitted to, reviewed, and approved in writing by or on behalf of the Commission. The specific drawings and information required will be determined by the staff. To save time, preliminary drawings should be submitted and approved prior to final drawings.
 - a. **Site, Architectural, Grading, and Landscaping Plans.** Site, grading, architectural, and landscaping plans shall include and clearly label the mean high tide line at the Pacific Shores Center site, five feet above Mean Sea Level at the Deepwater Slough site, the line 100 feet inland of the mean high tide line and the contour five feet above Mean Sea Level, property lines, the boundaries of all areas to be reserved for public access purposes and open space, grading, details showing the location, types, dimensions, and materials to be used for all structures, irrigation, landscaping, drainage, seating, parking, signs, lighting, fences, paths, trash containers, utilities and other proposed improvements. Plans submitted for the Deepwater Slough Island mitigation project shall conform to the permit issued by the U.S. Army Corps of Engineers for the project, as may be revised according to Special Condition II-E.
 - b. **Engineering Plans.** Engineering plans shall include a complete set of contract drawings and specifications and design criteria. The design criteria shall be appropriate to the nature of the project, the use of any structures, soil and foundation conditions at the site, and potential earthquake-induced forces. Final plans shall be signed by the professionals of record and be accompanied by:
 - (1) Evidence that the design complies with all applicable codes; and

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- (2) Evidence that a thorough and independent review of the design details, calculations, and construction drawings has been made.

Plans submitted shall be accompanied by a letter requesting plan approval, identifying the type of plans submitted, the portion of the project involved, and indicating whether the plans are final or preliminary. Approval or disapproval shall be based upon:

- (1) Completeness and accuracy of the plans in showing the features required above, particularly the mean high tide line, property lines, and the line 100-feet inland of the mean high tide line, and any other criteria required by this authorization;
- (2) Consistency of the plans with the terms and conditions of this authorization;
- (3) The provision of the amount and quality of public access to and along the shoreline and in and through the project to the shoreline required by this authorization;
- (4) Consistency with legal instruments reserving public access and open space areas;
- (5) Assuring that any fill in the Bay does not exceed this authorization and will consist of appropriate shoreline protection materials as determined by or on behalf of the Commission;
- (6) Consistency of the plans with the recommendations of the Design Review Board; and
- (7) Assuring that appropriate provisions have been incorporated for safety in case of seismic events.

Plan review shall be completed by or on behalf of the Commission within 45 days after receipt of the plans to be reviewed.

2. **Conformity with Final Approved Plans.** All work, improvements, and uses shall conform to the final approved plans. Prior to any use of the facilities authorized herein, the appropriate design professional(s) of record shall certify in writing that, through personal knowledge, the work covered by the authorization has been performed in accordance with the approved design criteria and in substantial conformance with the approved plans. No noticeable changes shall be made thereafter to any final plans or to the exterior of any constructed structure, outside fixture, lighting, landscaping, signage, landscaping, parking area, or shoreline protection work without first obtaining written approval of the change(s) by or on behalf of the Commission.

3. **Discrepancies Between Approved Plans and Special Conditions.** In case of any discrepancy between final approved plans and Special Conditions of this authorization or legal instruments approved pursuant to this authorization, the Special Condition or the legal instrument shall prevail. The permittee is responsible for assuring that all plans accurately and fully reflect the Special Conditions of this authorization and any legal instruments submitted pursuant to this authorization.

C. Shoreline Protection

1. **Riprap Material.** The permittee shall investigate alternative forms of shoreline protection, such as ArmorFlex or other honeycomb structures that form a medium for marsh plant establishment, which would: (1) minimize fill in the Bay; (2) minimize impacts on wildlife and habitat; (3) have the greatest potential to provide a medium for marsh resources; and (4) maximize public access to the Bay. A coastal engineer must determine that this form of shoreline protection is well-engineered, permanent, stable, and provides a safe shoreline requiring little future maintenance. The staff shall determine through the review of plans prepared by a coastal engineer whether a biologically superior form of riprap is feasible for the project.

If alternatives to standard riprap are determined infeasible due to lack of permanency, stability, or high maintenance needs, then riprap material shall be either quarry rock or specially cast or carefully selected concrete pieces free of reinforcing steel and other extraneous material and conform to quality requirements for specific gravity, absorption, and durability specified by the California Department of Transportation or the U. S. Army Corps of Engineers. The material shall be generally spheroid-shaped. The overall thickness of the slope protection shall be no more than three feet measured perpendicular to the slope. Use of dirt, small concrete rubble, concrete pieces with exposed rebar, large and odd shaped pieces of concrete, and asphalt concrete as riprap is prohibited.

2. **Riprap Removal.** The permittee shall remove approximately 2,200 cubic yards of concrete debris, covering approximately 9,900 square feet, both below and above the mean high tide line to create a stable slope and install new shoreline protection. All such debris shall be removed to a location outside the Commission's jurisdiction. In the event that any such material is placed in any area within the Commission's jurisdiction, the permittee, its assignees, or successors in interest, or the owner of the improvements, shall remove such material, at its expense, within ten days after it has been notified by the Executive Director of such placement.
3. **Riprap Placement.** The permittee shall place riprap material so that a permanent shoreline with a minimum amount of fill is established by means of an engineered slope not steeper than two (horizontal) to one (vertical). The slope shall be created by the placement of a filter layer, if necessary, and protected by riprap material of suffi-

cient size to withstand wind and wave generated forces at the site. Appropriate placement of a biologically sensitive riprap alternative, if feasible, shall be determined by staff in consultation with a coastal engineer.

4. Shoreline Protection Plans

- a. **Design.** Professionals knowledgeable of the Commission's concerns, such as civil engineers experienced in coastal processes, should participate in the design of the shoreline protection improvements authorized herein.
- b. **Plan Review.** The permittee shall not commence any work whatsoever on the shoreline protection improvements authorized herein until final plans have been submitted to, reviewed, and approved in writing by or on behalf of the Commission. The plans shall consist of appropriate diagrams and cross-sections that: (1) show and clearly label the mean high tide line, which is approximately +2.8 feet National Geodetic Vertical Datum, property lines, grading limits, and details showing the location, types, and dimensions of all materials to be used; (2) indicate the source of all materials to be used; and (3) indicate who designed the proposed shoreline protection improvements and their background in coastal engineering and familiarity with the Commission's concerns.

Approval or disapproval of the plans shall be based upon: (1) completeness and accuracy of the plans in showing the features required above; (2) consistency of the plans with the terms and conditions of this permit; (3) assuring that the proposed fill material does not exceed this permit; (4) the appropriateness of the types of fill material and their proposed manner of placement; and (5) the preparation of the plans by professionals knowledgeable of the Commission's concerns, such as civil engineers experienced in coastal processes. All improvements constructed pursuant to this permit shall conform to the final approved plans. No changes shall be made thereafter to any final plans or to the constructed shoreline protection improvements without first obtaining written approval of the change(s) by or on behalf of the Commission.

5. **Maintenance.** The shoreline protection improvements authorized herein shall be regularly maintained by, and at the expense of the permittee, any assignees, lessees, sublessees, or other successors in interest to the project. Maintenance shall include, but not be limited to, collecting any shoreline protection or riprap materials that become dislodged and repositioning them in appropriate locations within the riprap covered areas, replacing in-kind shoreline protection or riprap material that is lost, repairing any required filter fabric as needed, and removing debris that collects on top of the shoreline protection. Within 30 days after notification by the staff of the Commission, the permittee or any successors or assignees shall correct any maintenance deficiency noted by the staff.

D. Public Access

1. a. **Shoreline Frontage Area and Project Perimeter.** The permittee shall make available, exclusively to the public for unrestricted public access and open space purposes for walking, bicycling, sitting, viewing wildlife, picnicking, and related purposes, an approximately 549,432-square-foot area (12.6 acres), consisting of a 299,739-square-foot waterfront park and a 249,693-square-foot perimeter trail and open space system, along approximately 2,315 feet of shoreline and along salt crystallizer beds and bittern ponds around the east and south perimeter of the project site connecting with Seaport Boulevard, as generally shown on Exhibit A, except the area northwest of lot 13, which may not be required to be dedicated for public access purposes if the Design Review Board determines that a bicycle lane is unnecessary after final plan review of lot 13. If the Design Review Board determines a bicycle lane is required on the northwest side of lot 13, this area shall become dedicated public access. If the permittee wishes to use the public access area for other than public access purposes, it must obtain prior written approval by or on behalf of the Commission. Public access may be restricted along the pathway adjacent to the salt crystallizer beds and bittern ponds by the U.S. Fish and Wildlife Service, if any adverse impacts to wildlife arise.
- b. **Access Corridors.** As long as the improvements authorized herein remain in place, the permittee shall provide and make available bicycle access along the entire portion of Seaport Boulevard in the project site (lots H and I), which is a private road.
2. **Permanent Guarantee.** Prior to the use of any structure authorized herein, the permittee shall, by instrument or instruments acceptable to counsel for the Commission, dedicate to a public agency or otherwise permanently guarantee such rights for the public to the approximately 549,432-square-foot public access area, as specified in Special Condition II-D-1-a. The instrument(s) shall create rights in favor of the public which shall commence no later than after completion of construction of any public access improvements required by this authorization and prior to the use of any structures authorized herein. Such instrument shall be in a form that meets recordation requirements of San Mateo County and shall include a legal description of the property being restricted and a map that clearly shows and labels the mean high tide line, the property being restricted for public access, the legal description of the property and of the area being restricted for public access, and other appropriate landmarks and topographic features of the site, such as the location and elevation of the top of bank of any levees, any significant elevation changes, and the location of the nearest public street and adjacent public access areas. Approval or disapproval of the instrument shall occur within 30 days after submittal for approval and shall be based on the following:

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- a. Sufficiency of the instrument to create legally enforceable rights and duties to provide the public access area required by this authorization;
 - b. Inclusion of an exhibit to the instrument that clearly shows the area to be reserved with a legally sufficient description of the boundaries of such area; and
 - c. Sufficiency of the instrument to create legal rights in favor of the public for public access that will run with the land and be binding on any subsequent purchasers, licensees, and users.
3. **Recordation of the Instrument.** Within 30 days after approval of the instrument, the permittee shall record the instrument and shall provide evidence of recording to the Commission. No changes shall be made to the instrument after approval without the express written consent by or on behalf of the Commission.
4. **Improvements Within the Total Public Access Area.** Prior to the use of any structure authorized herein, the permittee shall install within the approximately 549,432 square feet of public access the following improvements, as generally shown on attached Exhibit A:
- a. A 10-foot-wide pathway along 2,315 linear feet of shoreline and adjacent to the salt crystallization beds and bittern ponds along the north, east, and south perimeter of the project site connecting with Seaport Boulevard with occasional benches and trash containers;
 - b. A wetland interpretive plaza with benches, trash containers, slate paving, and stone steps with wetland information;
 - c. An informal turf and play meadow area with trash containers and planted with native or drought-resistant turf, where possible;
 - d. A tidal action interpretive plaza with benches, trash containers, stone paving, bronze moon-phase medallions, and a tide cycle wall;
 - e. A bird viewing interpretive plaza with benches, trash containers, cobble paving, a bronze bird medallion, and a shorebird interpretive wall;
 - f. Benches and trash containers at the overlook plaza;
 - g. Signs at the public access area installed according to Special Condition II-B-8; ~~and~~
 - h. A total of 120 parking spaces provided for public access and the related educational, recreational, and commercial uses within the shoreline band; and
 - i. An extension of the 10-foot-wide trail from the project site to the east property line shared with West Point Marina (Amendment No. Two).

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Such improvements shall be consistent with the plans approved pursuant to Special Condition II.A. of this authorization and substantially conform to the plans entitled "Pacific Shores Center, Schematic Submittal, Sheet L8.6", dated June 16, 1998, received by the Commission on November 17, 1998, and prepared by DES Architects and Engineers, Bohley-Maley Associates, and Befu Associates and the plans entitled "Pacific Shores Center, BCDC Submittal, Sheets A1.1, C1.1-C1.6", dated October 9, 1998, received by the Commission on November 17, 1998, and prepared by DES Architects and Engineers, Bohley-Maley Associates, and Befu Associates. The specific number of benches and trash containers required at the project site will be determined at the time of plan review based upon the relative use of the public access sites.

5. **Maintenance.** The areas and improvements within the approximately 549,432-square-foot area shall be permanently maintained by and at the expense of the permittee or ~~its~~ their assignees. Such maintenance shall include, but is not limited to, repairs to all path surfaces, benches, trash containers, replacement of any plant materials deposited within the access areas, removal of any encroachments into the access areas, and assuring that the public access signs remain in place and visible. Within 30 days after notification by the Commission staff, the permittee shall correct any maintenance deficiency noted in a staff inspection of the site.
6. **Assignment.** The permittee shall transfer maintenance responsibility to a public agency, a property owners association, or another party acceptable to the Commission at such time as the property transfers to a new party in interest but only provided that the transferee agrees in writing, acceptable to counsel for the Commission, to be bound by all terms and conditions of this permit.
7. **Reasonable Rules and Restrictions.** The permittee may impose reasonable rules and restrictions for the use of the public access areas to anticipate and correct particular problems that may arise. Rules may include restricting hours of use and delineating appropriate behavior. In addition, public access uses may be restricted by or on behalf of the Commission along the pathway adjacent to the salt crystallization beds and bittern ponds upon recommendation of the U.S. Fish and Wildlife Service and the California Department of Fish and Game if any adverse impacts to wildlife arise. However, an alternative public access connection shall be provided along Seaport Boulevard suitable to the Commission during those periods when public access along salt crystallization beds and bittern ponds is restricted. Such limitations, rules, and restrictions shall have first been approved by or on behalf of the Commission upon a finding that the proposed rules would not significantly affect the public nature of the area, would not unduly interfere with reasonable public use of the public access areas, and would tend to correct a specific problem that the permittee has both identified and substantiated.

8. **Public Access and Bay Trail Signage.** Due to the size and isolated nature of the project site, public access and Bay Trail signage shall be required along Seaport Boulevard commencing from the 101 Freeway to the start of the shoreline public access where Seaport Boulevard turns northeast on the project site. Bicycle route signs (indicating a "Class III" bicycle route) shall be posted along Seaport Boulevard throughout the project site. The BCDC staff shall review plans for this portion of the project area (i.e., by the public access parking and building envelopes for the aquatic and conference centers) to ensure that appropriate signage or other prominent identifying feature, as necessary, designates the shoreline access way. The design and location of signs shall be approved pursuant to Special Condition II-A.
9. **Bicycle Access/Bay Trail Along Seaport Boulevard.** A signed bicycle lane shall be required from the terminus of the shoreline pathway at the northwest property line by lot 13 and the public access parking lot to Seaport Boulevard, completing the pathway around the entire perimeter of the project site. As stated in Special Condition II-D-10, the bicycle lane northwest of lot 13 may not be required if the Design Review Board determines it is not necessary after review of final plans for lot 13, 14, 15, and 16. Lot 13 may be reviewed separately by the Design Review Board. The Design Review Board shall determine whether the bicycle lane must be striped or whether only signage is necessary for both identification and safety. In addition, the Design Review Board shall determine whether the portion of the shoreline pathway that runs through the waterfront park located in lot D and is required to be setback from the shoreline by 100 feet to provide a buffer for wildlife, shall be separated five feet from Seaport Boulevard to ensure pedestrian and bicycle safety or if it shall run directly adjacent to and parallel with Seaport Boulevard.
10. **Public Access/Building Setbacks/DRB Review of Final Plans.** Proposed buildings within the shoreline band shall be setback at a minimum of a 1:1 ratio of building height to distance from top of bank to encourage public use of the walkway. Thus, the marine sciences center shall be setback at a minimum of 40 feet from the top of bank, the aquatic center shall be setback a minimum of 40 feet from the top of bank, the conference center/restaurant complex shall be setback a minimum of 40 feet from the top of bank, and the retreat facility shall be setback a minimum of 30 feet. Final plans for lots 13, 14, 15 and 16 shall be reviewed by the Design Review Board. At that time, the Design Review Board will also evaluate the need for a bicycle trail from the shoreline pathway northwest of lot 13 to Seaport Boulevard. If these proposed buildings are not constructed, native or drought-resistant landscaping, including drought-resistant turf, shall be planted, where possible.
11. **Public Access to Transit Stops.** The project site shall be designed to maximize pedestrian access to transit stops.

12. **Public Access and Protection of Natural Resources.** As may be required by U.S. Army Corps of Engineers, the permittee shall create vegetative buffers around portions of the project site to minimize disturbance to sensitive wildlife habitat at the project site as shown in plans entitled "Pacific Shores Center, Schematic Submittal, Sheet L8.6", dated June 16, 1998, received by the Commission on November 17, 1998, and prepared by DES Architects and Engineers, Bohley-Maley Associates, and Befu Associates and the plans entitled "Pacific Shores Center, BCDC Submittal, Sheets A1.1, C1.1-C1.6", dated October 9, 1998, received by the Commission on November 17, 1998, and prepared by DES Architects and Engineers, Bohley-Maley Associates, and Befu Associates and the plans contained in the "Wetland Mitigation and Monitoring Plan, Pacific Shores Center, Redwood City", dated February 1998. The pathway adjacent to the salt crystallization beds and bittern ponds and portions of the pathway near the Westpoint Slough mudflats shall be setback approximately 100 feet to minimize disturbances to shorebirds and wildlife. Tidal mounds varying in height from 5-1/2 to 7 feet shall screen the active recreation uses at the site's play meadow from the sensitive, tidal mudflat along Westpoint Slough.
13. **Vehicular Access to Westpoint Marina over Guaranteed Public Access Trail and Submittal of Plans for Pedestrian Safety Measures.** The permittee may allow the Westpoint Marina (BCDC Permit No. 2-02) permittee, Mark Sanders, to construct two vehicular accessways, one approximately 35 feet wide and one approximately 50 feet wide, on the east side of the Pacific Shores site across the 10-foot-wide public access trail required herein. The permittee shall submit for plan review, as outlined under Special Condition II-B of this permit, plans showing the location and description of safety measures (i.e., signage, crosswalks, speed bumps, traffic dots, etc.) to be installed to ensure that the vehicular entrances to the site do not impede safe pedestrian and bicycle use of the public access trail required herein. These plans shall be reviewed by or on behalf of the Commission, and should the Commission or its staff determine that additional safety measures are required to protect trail users, the permittee shall install such measures within one month of notification or other mutually agreed upon date (Amendment No. Two).

E. **Marsh Restoration Work and Plans.** Prior to the commencement of any marsh restoration work at Deepwater Slough Island pursuant to this authorization, the permittee shall submit a marsh restoration plan and program, to be approved by or on behalf of the Commission, for the restoration and enhancement of tidal marshland, and adjoining transitional and upland habitat. The plan and program shall provide for: (1) excavating approximately 32 acres of the site currently at or above five feet Mean Sea Level and creating a marsh plain approximately six inches below Mean Higher High Water with slough channels sufficient to flood and drain the

entire 136 acre Deepwater Slough Island; (2) extending the channels into an adjacent 27 acres of Deepwater Slough Island that currently is largely barren, and (3) preserving and expanding transitional habitat. In addition, the plan and program shall contain the following:

1. **Site Conditions and Modifications.** A map of the site showing the existing topography at one-foot contour intervals and a topographic map showing the proposed modifications at one foot elevations. All elevations shall be relative to National Geodetic Vertical Datum (NGVD). The map shall include typical cross-sections showing proposed elevation of marsh plain, any channels, and any high spots. The map shall show: (1) figures for the ratios of typical horizontal to vertical slopes for existing and proposed marsh surface, transitional habitat channels, and sloughs; (2) proposed plant species along the cross-sections according to their expected zone of growth; (3) the elevation of adjacent surrounding properties; and (4) figures for the estimated tidal range related to Mean Higher High Water, Mean High Water, Mean Lower Low Water, Mean Sea Level, the maximum predicted tide, and the 100-year tide.
2. **Soil Information.** The program shall include a report identifying the type of soils found at the site and the soil type of any fill to be imported to the site. Information shall be provided on the quantitative soil measurements of soil texture and dry density for both existing and imported soils. In addition, for imported soils only, information shall be provided on the salinity, pH, and organic content.
3. **Planting and Seeding Plan.** The restoration plan shall include a list of the vegetation proposed to be planted, and a planting and maintenance plan. Such plans shall include a program for eliminating existing exotic vegetation and preventing the establishment of exotic vegetation at the site.
4. **Schedule.** The program shall include a schedule indicating when excavation, fill, and grading will occur, the time to be allowed for settlement, and the time when planting will occur.
5. **Monitoring.** Every year, starting July 1 of the year following project completion, for a ten-year period, or until those portions of the restoration site subject to tidal action are approximately 80% vegetated, whichever occurs first, the permittee shall report to the Commission on the effects of the project in restoring tidal marsh and transitional habitat at the restoration site. The report shall include measuring sedimentation rates, percentage of the site revegetated, plant survival, approximate percentage representation of different plant species, and a qualitative assessment of plant growth rates for the tidal restoration area, including adjacent transitional and upland habitats. Undesirable exotic plant species such as pepperweed (*Lepidium latifolium*), *Spartina alterniflora*, broom, or star thistle shall be reasonably controlled during the ten year

monitoring period. Should adverse conditions be identified during the five year monitoring period, the permittee shall take corrective action as specified by or on behalf of the Commission.

6. **Marsh and Upland Plant Protection During Construction and Dredging.** The work authorized by this permit shall be performed in a manner that will prevent, avoid, or minimize to the extent possible any significant adverse impact on any tidal marsh, other sensitive wetland resources, and existing native upland and transitional vegetation. If any unforeseen adverse impacts occur to any such areas as a result of the activities authorized herein, the permittee shall restore the area to its previous condition, including returning the disturbed area to its original elevation and soil composition and, if the area does not revegetate to its former condition within one year, the permittee shall seed all disturbed areas with appropriate vegetation consistent with plans approved pursuant to Special Condition II-A of this permit.
7. **Protection of Special Status Animal Species.** The permittee shall take all precautions to avoid adverse impacts to the California clapper rail, California black rail, and Salt Marsh harvest mouse. The permittee shall employ reasonable mitigation measures, such as but not limited to: (1) if any work will be performed during the clapper rail breeding season (February 1 through August 31), the permittee shall conduct approximately weekly call counts each year during the rail courting period, from January to April 15; (2) surveys shall be coordinated with the U.S. Fish and Wildlife Service; (3) a 700-foot-wide buffer shall be maintained at active clapper rail nests and be monitored by a qualified biologist; and (4) all activity near the buffer area shall be evaluated by the field biologist in an effort to eliminate any possible disturbance of adult or juvenile birds.

F. **Non-Tidal Wetland Mitigation.** The permittee shall submit an annual letter, starting March 1, 2000, and each March 1 thereafter until all of the excess mitigation credits have been expended for the 10 acres that were in excess of the mitigation required by the U.S. Army Corps of Engineers Section 404 permit. If such credits are granted by the U.S. Army Corps of Engineers, such annual reports shall be submitted until all credits are purchased and implemented.

G. **Disabled Access.** To the maximum extent feasible, the permittee shall construct all improvements authorized or required herein to be accessible by those with disabilities and consistent with local, state, and federal accessibility laws including, but not limited to, the Americans with Disabilities Act.

H. **Debris Removal.** The permittee shall remove all construction debris to a location outside the jurisdiction of the Commission. In the event that any such material is placed in any area within the Commission's jurisdiction, the permittee, its assigns, or successors in interest, or the

owner of the improvements, shall remove such material, at its expense, within ten days after it has been notified by the Executive Director of such placement.

I. Construction Operations. The permittee shall perform all construction operations to prevent construction materials from falling into the Bay. In the event that such material escapes or is placed in an area subject to tidal action of the Bay, the permittee shall immediately retrieve and remove such material at its expense.

J. Creosote Treated Wood. The permittee shall not use any new pilings or other new wood structures that have been pressure treated with creosote in any area subject to tidal action in the Bay or within the Commission's jurisdiction as part of the project authorized herein. To the extent that creosote treated pilings or structures are currently in use at the site, the permittee may continue to use and maintain such pilings or wood structures.

K. Maintenance. The permittee may repair, replace, and maintain, on an in-kind basis only, and to the specifications and plans approved by or on behalf of the Commission, all improvements authorized herein. Prior to carrying out maintenance activities, the permittee shall submit a description of the maintenance activities and map showing the location of such work for review and approval by or on behalf of the Commission. Such work shall be reviewed and approved or disapproved within 30 days.

L. Abandonment. If, at any time, the Commission determines that the improvements in the Bay authorized herein, have been abandoned for a period of two years or more, or have deteriorated to the point that public health, safety or welfare is adversely affected, the Commission may require that the improvements be removed by the permittee, its assignees or successors in interest, or by the owner of the improvements, within 60 days or such other reasonable time as the Commission may direct.

M. Commission Jurisdiction Over Fill Area. Notice is hereby given that, under the McAteer-Petris Act, the area of the approved project that is within the Commission's Bay jurisdiction under Section 66610(a) remains within that jurisdiction even after fill or substantial change in use, authorized by the Commission, may have changed the character of the area; so that the permittee or the permittee's successors in interest will require further action by or on behalf of the Commission prior to any future change of use or work within areas filled pursuant to this authorization.

N. Notice to Contractor. The permittee shall provide a copy of this amended permit to any contractor or person working in concert with the permittee to carry out the activities authorized herein and shall point out the special conditions contained herein.

O. Notice of Assignment

1. **Notice to Buyers.** Prior to entering into any agreement to sell or otherwise transfer any property interest to any third party, the permittee, or any assignee of this permit or any part of it, shall provide the party with a copy of this permit and shall call his or

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her attention especially to the provisions regarding public access, and the need to obtain approval of construction plans prior to any construction.

2. **Partial Assignment of Permit.** Within ten days after executing any agreement to sell or otherwise transfer any interest in the subdivision to a buyer, the transferor shall:
(a) notify the Commission of the nature of the transfer, the name address and telephone number of the buyer and the date of the transfer; and (b) shall also submit a partial assignment of this permit for the area transferred that has been executed by the buyer indicating that the buyer has read, understood, and agreed to the terms and conditions of this permit.

P. **Recording.** The permittee shall record this document or a notice specifically referring to this document with San Mateo County within 30 days after execution of the amended permit issued pursuant to this authorization and shall, within 30 days after recordation, provide evidence of recordation to the Commission.

Q. **Hold Harmless Agreement.** The permittee agrees to indemnify, defend, and save harmless the State of California, its agencies, departments, officers, agents, and employees from any and all claims, demands, losses or judgments accruing or resulting to any person, firm, corporation, or entity who may be injured or damaged by work performed in accordance with the terms and conditions of this permit, in particular, the intersection of a public access trail with two vehicular entrances to the Westpoint Marina (Amendment No. Two).

III. Findings and Declarations

This permit is issued based on the Commission's findings and declaration that the authorized work is consistent with the McAteer-Petris Act, and the *San Francisco Bay Plan*, the California Environmental Quality Act, and the Commission's amended management program for the San Francisco Bay segment of the California coastal zone for the following reasons:

A. **Use.** The recently adopted Seaport Plan and Bay Plan amendments deleted the port priority use designation from the project site and the Bay Plan Map No. Six does not designate the Pacific Shores Center project site for any other priority uses. Therefore, the proposed office, research, and development use is consistent with the use requirements of the Bay Plan.

B. **Fill.** Among other requirements, Section 66605 of the McAteer-Petris Act requires that fill in the Bay should only be authorized when: (1) the public benefits from the fill clearly exceed public detriment from the loss of water areas; (2) the fill is limited to water-oriented uses or minor fill to improve shoreline appearance or public access; (3) there is no alternative upland location; (4) the fill is the minimum amount necessary; (5) the fill minimizes harmful effects to the bay, such as the reduction or impairment of the volume surface area or circulation of water, water quality, fertility of marshes or fish and wildlife resources; and (6) that the fill will, to the maximum extent feasible, establish a permanent shoreline.

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The permittee will place a total of approximately 4,900 square feet of new, pile-supported and floating fill for boat docks associated with the marine sciences center and the aquatic center and a new, net total of approximately 956 cubic yards of submerged fill covering approximately 4,302 square feet for shoreline protection. The permittee will remove approximately 1,450 cubic yards of existing riprap covering approximately 6,525 square feet from below the mean high tide line to install new shoreline protection. Therefore, the net increase in new Bay fill will be approximately 9,202 square feet of Bay.

The pile-supported and floating fill for boat docks will be for water-oriented uses. The dock at the marine sciences center will be used to dock a vessel for marine research and education purposes and the dock and launching platform associated with the aquatic center will be used to launch hand-held boats. The submerged fill for shoreline protection will improve the appearance of and stabilize the shoreline and ensure that the new public access areas are adequately protected from stormwater runoff and erosion. Because the docks and shoreline protection must be located over the Bay or at the Bay's edge to serve their respective functions, there is no alternative upland location for the uses for which the fill will be placed.

To ensure that the fill for the boat docks is the minimum amount necessary, the permittee will confine the dock size to only that required for water-oriented uses and the dock length to that needed as a result of tidal movement at the site. To ensure that the fill for shoreline protection is the minimum amount necessary, the permittee will re-engineer the shoreline following the natural contours to achieve a stable slope of 2:1. Placement of concrete riprap would potentially impact some wildlife use along the shoreline. An alternative to standard concrete riprap, such as honeycomb structures that form a medium for marsh plant establishment, will be used by the permittee, if determined to minimize fill and provide a stable, permanent shoreline.

The Commission generally does not require mitigation for pile-supported fill of this size used for water-oriented recreation. The Commission's Mitigation Practices Guidebook states that, "[m]itigation has rarely been required for floating boat docks....[t]he Commission has required mitigation for floating boat docks, however, when either construction or use of the dock(s) would adversely impact a sensitive or endangered wildlife resource...." The Guidebook also states that "[m]itigation has not been required for pile-supported structures associated with recreational boat docks. However, such fills have generally been small (less than 9,000 square feet)...." The Final EIR for the project found that no significant impacts to biological resources would result from the construction of the docks and boat launching platform, although indirect disturbance effects from the use of the facilities (i.e., dispersal as a result of noise and activity) will be expected.

Similarly, the Commission does not generally require mitigation for shoreline protection, unless the submerged fill adversely impacts sensitive Bay resources. In this case, the bank may provide some habitat values to the sensitive wildlife that are located in the area. Thus, there is the potential that the placement of new shoreline protection would adversely impact Bay resources.

Alternative shoreline protection methods exist that provide a greater potential as a medium for the establishment of marsh and transitional plants and that would result in less fill in the Bay. The permittee will use an alternative form of shoreline protection if a coastal engineer can assure that fill placed for shoreline protection creates a well-engineered, permanent, stable, and safe shoreline requiring little future maintenance.

Special Conditions II-B, II-C, II-E, and II-H through II-M are necessary to ensure that the new, pile-supported and floating fill for the boat docks and the new submerged fill for shoreline protection are properly installed and engineered, minimize the amount of fill and impacts to Bay resources, and establish a permanent shoreline, and that the public benefits of the fill outweigh the public detriments. Special Condition II-C is necessary to ensure that a biologically superior alternative to riprap is implemented for shoreline protection, if determined to provide a permanent, stable, and safe shoreline that minimizes Bay fill. Therefore, as conditioned, the Commission finds that fill authorized herein is consistent with Section 66605 of the McAteer-Petris Act.

C. **Public Access.** Section 66602 of the McAteer-Petris Act states "that existing public access to the shoreline and waters of the San Francisco Bay is inadequate and that maximum feasible public access, consistent with a proposed project, should be provided." The *San Francisco Bay Plan* policies on Public Access further state that "...maximum feasible public access should be provided in and through every new development in the Bay or on the shoreline...the access should be permanently guaranteed...should be consistent with the physical environment, including the protection of natural resources...provide for the public's safety and convenience...built to encourage diverse Bay related activities and movement to and along the shoreline...and connect to the nearest public thoroughfare where convenient parking or public transportation may be available."

There is no existing public access at the project site. The permittee will provide approximately 549,432 square feet of public access in the shoreline band, the shoreline frontage area, and around the project perimeter that will be constructed along approximately 2,315 linear feet of shoreline fronting Westpoint Slough and along the salt ponds to Seaport Boulevard and will include: (1) a 10-foot-wide pathway along 2,315 linear feet of shoreline and along the salt crystallization beds and bittern ponds to Seaport Boulevard; (2) a wetland interpretive plaza ; (3) an informal turf area and play meadow; (4) a tidal action interpretive plaza; (5) a bird viewing interpretive plaza; (6) a total of 120 public access parking spaces; and (7) all improvements pursuant to Special Condition II-D-4.

Several special conditions are required to ensure that the project will provide maximum feasible public access. Special Condition II-D-9 and II-D-11 are necessary to ensure that the public access connects, as much as possible, to a public thoroughfare or other public access areas and trails. The permittee will provide a connection to the existing portions of the Bay Trail along Seaport Boulevard to the project site. In addition, although the 10-foot-wide pathway along the shoreline terminates at the northwest corner of the project site at the adjacent property. A bicycle

lane may extend northwest of lot 13 to Seaport Boulevard, if the Design Review Board determines that it is required after final review of lots 13, 14, and 15, pursuant to Special Condition II-D-9 and II-D-10. Although a connection to the adjacent property is not provided at the termination of the pathway at this time, the pathway will be constructed at this time to optimize future public access connections should the heavy industrial use of the site be abandoned and the Bay Plan amended to change the priority use at this site. The permittee will also provide pedestrian access to transit stops.

Special Condition II-D-8 is necessary to ensure that despite the project site's isolated location, potential public access users are aware of the shoreline access at the site. This condition requires public access signage along Seaport Boulevard from the 101 Freeway to the shoreline access area. Special Condition II-D-10 is necessary to ensure that building envelopes within the shoreline band are set back from the top of bank to encourage use of public walkways. Special Condition II-D-12 is necessary to ensure that any adverse impacts as a result of public access area use on the sensitive wildlife habitats located adjacent to the project site will be minimized with the use of vegetative buffers.

Therefore, as conditioned, the Commission finds that the project will provide maximum feasible public access, consistent with the project and Section 66602 of the McAteer-Petris Act.

D. Non-Tidal Wetland Mitigation. The U.S. Army Corps of Engineers has determined that approximately 11.4 acres of the project site are wetlands within the regulatory jurisdiction of the Corps. However, these wetlands are diked, not subject to tidal action, and largely outside the Commission's regulatory jurisdiction. The permittee will fill the 11.4 acres of wetlands and replace the lost habitat values by restoring and recreating wetland habitat off-site on the 140-acre Deepwater Slough Island, a part of Bair Island west of Redwood Creek. This mitigation includes: (1) creating approximately 21 acres of wetlands from the existing upland habitat; (2) restoring approximately 107 acres of existing wetlands; and (3) improving the remaining 13 acres of upland habitat. Approximately 1,382,029 square feet (31.7 acres) of this mitigation project are within the Commission's shoreline band jurisdiction.

Although mitigation for the filling of non-tidal wetlands is not required by the Commission, Deepwater Slough Island is within the Commission's shoreline band jurisdiction. Additionally, once the island is tidally-influenced, a larger portion of the site will become part of the Commission's jurisdiction. Thus, Special Condition II-B, II-E, and II-G are necessary to ensure that the mitigation site will be successful.

Based upon discussions with the U.S. Fish and Wildlife Service and the U.S. Army Corps of Engineers, the permittee may remove all of the upland dredged material from the island to aid in red fox control efforts, if the additional 10 acres of restored wetland acreage can be used for mitigation for other approved projects. The permittee would like to "sell" approximately 10 acres of restored wetland credits from the Deepwater Slough Island restoration site for use as mitigation for other projects, if its Section 404 permit authorizes this use. The permittee intends

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to transfer ownership of Deepwater Slough Island to the San Francisco Bay National Wildlife Refuge, or other appropriate agency, once the mitigation has been implemented and deemed successful.

Special Condition II-B, II-E, and II-G will ensure that the mitigation site is successful and that the Commission remains informed of the status of the 10 acres that may be used as mitigation credits. Therefore, the Commission finds that the project will be consistent with Bay Plan policies on Fish and Wildlife and Marshes and Mudflats.

E. **Non-Material Amendments.** Amendment No. One to this permit authorized a time extension for the commencement of construction from March 31, 2000 to March 31, 2001.

Amendment No. Two to this permit authorized the construction of a shoreline access trail extension to the east property line shared with Westpoint Marina. Previously, property to the east of the Pacific Shores project site was vacant and there was no need to connect the trail to the east property line. Now, however, the construction of the Westpoint Marina is under way and a continuous shoreline trail is possible. In addition, Amendment No. Two includes a special condition regarding the two vehicular entrances to the Westpoint Marina. The permittee granted an easement to the Westpoint Marina permittee that will result in vehicles crossing over a guaranteed public access trail in two locations. Although the public access trail along the perimeter of the Pacific Shores site is located outside of the Commission's jurisdiction, the trail was required as guaranteed public access. Therefore, two special conditions were included in this amended permit to allow the vehicular entrances to the Westpoint Marina site, to ensure that safety measures, such as crosswalks, signage, speed bumps, are installed to adequately protect the public access trail users, and to indemnify the Commission from any claims or losses associated with use of these easements. Expansion of the trail within the Commission's shoreline band jurisdiction is defined in Regulation Section 10601(b)(1) as "the placement of small amounts of inert inorganic fill...so long as the placement....does not have a significant adverse effect on present or possible future maximum feasible public access to the Bay consistent with the project...and on the environment." The authorization of two vehicular crossings across a guaranteed public access pathway that is located outside of the Commission's jurisdiction is consistent with the Commission's policies because the crossings will include protection measures to assure the safety of trail users and any adverse impacts on the public's use of the trail transversed by the two crossings will be offset by the correction of the shoreline trail required by Special Condition II-D-4-i. Thus, Amendment No. Two is a non-material amendment for which the Executive Director may issue an amendment to a major permit pursuant to Regulation Section 10822 and Government code Section 66632(f).

E. **Review Boards.** The Design Review Board evaluated the proposed project at its February 9, 1998 meeting. The Board determined that the proposed project would provide excellent, well-designed public access and a valuable mix of public access experiences. However, the Board recommended that the building envelopes within the shoreline band, including the marine sciences center, the aquatic center, and the conference center/restaurant complex, should be set

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back from the shoreline to encourage public use of the pathway. At least a 1:1 ratio of setback to building height was recommended by the Board. Therefore, Special Condition II-D-10 ensures that minimum building setbacks from the top of bank are at least a 1:1 ratio of setback to building height.

F. G. Environmental Review. On May 8, 1995, the City of Redwood City, acting as lead agency under the California Environmental Quality Act, certified the Final Environmental Impact Report for the project.

G. H. Public Trust. The Commission finds that the 2,600 square feet of pile-supported fill for a dock that will provide marine research and education purposes, the approximately 2,300 square feet of pile-supported and floating fill for a dock and launching platform that will be used to launch hand-held boats, and the approximately 4,302 square feet for shoreline protection are water-oriented uses as defined by Section 66605 of the McAteer-Petris Act. Fill for water-oriented uses is consistent with the public trust. Thus, the Commission finds that the fill is consistent with the public trust.

H. I. Conclusion. For all of the above reasons, the benefits of the proposed project clearly exceed the detriment of the loss of water areas and the project will provide the maximum feasible public access to the Bay and its shoreline. Therefore, the project is consistent with the *San Francisco Bay Plan*, the McAteer-Petris Act, the Commission's Regulations, and the Commission's amended management program for the San Francisco Bay segment of the California coastal zone.

IV. Standard Conditions

~~J.~~ A. This amended permit shall not take effect unless the permittee executes the original of this amended permit and returns it to the Commission within ten days after the date of the issuance of the amended permit. No work shall be done until the acknowledgment is duly executed and returned to the Commission.

B. The attached Notice of Completion and Declaration of Compliance form shall be returned to the Commission within 30 days following completion of the work.

~~E.~~ C. The rights, duties, and obligations contained in this amended permit are assignable. When the permittee transfers any interest in any property either on which the authorized activity will occur or which is necessary to the full compliance of one or more conditions to this amended permit, the permittee/transferor and the transferee shall execute and submit to the Commission a permit assignment form acceptable to the Executive Director (call for a copy of the form or download it from our website). An assignment shall not be effective until the assignee executes and the Executive Director receives an acknowledgment that the assignee has read and understands the amended permit and agrees to be bound by the terms and conditions of the amended permit, and the assignee is accepted by the Executive Director as being reasonably capable of complying with the terms and conditions of the amended permit. The rights derived

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~~from this permit are assignable as provided herein. An assignment shall not be effective until the assignee shall have executed and the Commission shall have received an acknowledgment that the assignee has read and understood the application for this permit and the permit itself and agrees to be bound by the terms and conditions of the permit, and the assignee is accepted by the Executive Director as being reasonably capable of complying with the terms of the permit.~~

~~G.~~ D. Unless otherwise provided in this amended permit, the terms and conditions of this amended permit shall bind all future owners and future possessors of any legal interest in the land and shall run with the land.

~~H.~~ E. Unless otherwise provided in this amended permit, any work authorized herein shall be completed within the time limits specified in this amended permit, or, if no time limits are specified in the amended permit, within three years. If the work is not completed by the date specified in the amended permit, or, if no date is specified, within three years from the date of the amended permit, the amended permit shall become null and void. If an amended permit becomes null and void for a failure to comply with these time limitations, any fill placed in reliance on this amended permit shall be removed by the permittee or its assignee upon receiving written notification by or on behalf of the Commission to remove the fill.

~~A.~~ F. All required permissions from governmental bodies must be obtained before the commencement of work; these bodies include, but are not limited to, the U. S. Army Corps of Engineers, the State Lands Commission, the Regional Water Quality Control Board, and the city and/or county in which the work is to be performed, whenever any of these may be required. This amended permit does not relieve the permittee of any obligations imposed by State or Federal law, either statutory or otherwise.

~~C.~~ G. Work must be performed in the precise manner and at the precise locations indicated in your application, as such may have been modified by the terms of the amended permit and any plans approved in writing by or on behalf of the Commission.

~~D.~~ H. Work must be performed in a manner so as to minimize muddying of waters, and if diking is involved, dikes shall be waterproof. If any seepage returns to the Bay, the permittee will be subject to the regulations of the Regional Water Quality Control Board in that region.

~~F.~~ I. Unless otherwise provided in this amended permit, all the terms and conditions of this amended permit shall remain effective for so long as the amended permit remains in effect or for so long as any use or construction authorized by this amended permit exists, whichever is longer.

~~K.~~ J. Any area subject to the jurisdiction of the San Francisco Bay Conservation and Development Commission under either the McAteer-Petris Act or the Suisun Marsh Preservation Act at the time the amended permit is granted or thereafter shall remain subject to that jurisdiction notwithstanding the placement of any fill or the implementation of any substantial change in use authorized by this amended permit.

~~L.~~ K. Any area not subject to the jurisdiction of the San Francisco Bay Conservation and Development Commission that becomes, as a result of any work or project authorized in this amended permit, subject to tidal action shall become subject to the Commission's "bay" jurisdiction.

L. This amended permit reflects the location of the shoreline of San Francisco Bay when the permit was issued. Over time, erosion, avulsion, accretion, subsidence, relative sea level change, and other factors may change the location of the shoreline, which may, in turn, change the extent of the Commission's regulatory jurisdiction. Therefore, the issuance of this amended permit does not guarantee that the Commission's jurisdiction will not change in the future.

~~I.~~ M. Except as otherwise noted, violation of any of the terms of this amended permit shall be grounds for revocation. The Commission may revoke any amended permit for such violation after a public hearing held on reasonable notice to the permittee or its assignee if the amended permit has been effectively assigned. If the amended permit is revoked, the Commission may determine, if it deems appropriate, that all or part of any fill or structure placed pursuant to this amended permit shall be removed by the permittee or its assignee if the amended permit has been assigned.

~~M.~~ N. Unless the Commission directs otherwise, this amended permit shall become null and void if any term, standard condition, or special condition of this amended permit shall be found illegal or unenforceable through the application of statute, administrative ruling, or court determination. If this amended permit becomes null and void, any fill or structures placed in reliance on this amended permit shall be subject to removal by the permittee or its assignee if the amended permit has been assigned to the extent that the Commission determines that such removal is appropriate. Any uses authorized shall be terminated to the extent that the Commission determines that such uses should be terminated.

O. The permittee shall grant permission to any member of the Commission's staff to conduct a site visit at the subject property during and after construction to verify that the project is being and has been constructed in compliance with the authorization and conditions contained herein. Site visits may occur during business hours without prior notice and after business hours with 24-hour notice.

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MAY 20 2008

SAN FRANCISCO BAY CONSERVATION
& DEVELOPMENT COMMISSION

Executed at San Francisco, California, on behalf of the San Francisco Bay Conservation and Development Commission on the date first above written.

WILL TRAVIS

Executive Director

San Francisco Bay Conservation and
Development Commission

By: 

STEVE GOLDBECK

Deputy Director

SG/NB/ra

cc: U. S. Army Corps of Engineers, Attn: Regulatory Functions Branch
San Francisco Bay Regional Water Quality Control Board,
Attn: Certification Section
Environmental Protection Agency, Attn: Mike Monroe, WTR-8
San Mateo County Planning Department
City of Redwood City Planning Department
Sanger & Olson, Attn: John Sanger
LSA, Attn: Steve Foreman

* * * * *

Receipt acknowledged, contents understood and agreed to:

Executed at San Francisco

VII Pac Shores Investors LLC
Applicant

On 5/19/08

By: 

Title

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MAY 20 2008

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& DEVELOPMENT COMMISSION

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